

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

GN Docket No. 96-113

Section 257 Proceeding to Identify )  
and Eliminate Market Entry Barriers )  
for Small Businesses )

To: The Commission

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**COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP**

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## SUMMARY

The Rural Telecommunications Group ("RTG") submits these Comments to focus the Federal Communications Commission's attention on the recent decisions and policies it has released that adversely affect the interests of small and/or rural telecommunications providers.

A plethora of Commission decisions in the past three years have stifled the growth of small and/or rural telecom businesses, and in many ways have slowed the delivery of new and innovative services to rural America. The Commission's treatment of rural telecom providers since the advent of auctions has fallen far short of the FCC's obligations to rural telecom providers under the Communications Act of 1934. The FCC's recent decisions regarding designated entity preferences, cost of auction participation, interest-only payment plans, and geographic partitioning, as well as the elimination of extended implementation authority, have resulted in the erection of significant roadblocks to rural America's access to the information highway.

The Commission clearly has a stronger legal obligation to small and/or rural telecom providers — to consider their unique financial, geographic and public interest circumstances in every decision and policy it issues — than it has heretofore demonstrated. RTG sincerely hopes that its Comments will be read with an eye to improving the current regulatory environment.

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<b>for Small Businesses</b>	)	

**To: The Commission**

**COMMENTS OF THE RURAL  
TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these Comments in response to the Notice of Inquiry ("NOI"), released by the Federal Communications Commission ("FCC" or "Commission") on May 21, 1996, in GN Docket No. 96-113. These Comments focus on the Commission's recent inconsistent and unfavorable decisions that adversely effect small and/or rural telecommunications (telecom) providers.

**STATEMENT OF INTEREST**

RTG is comprised of local exchange carriers ("LECs") that are well-positioned to comment on the current state of the regulatory environment as it pertains to the interests of small and/or rural telecom providers.<sup>1</sup> All of RTG's members are actively providing

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<sup>1</sup> The majority of RTG's members are rural telephone companies, many of whom are now providing more than plain old telephone service. Thus, they are referred to in these Comments as small and rural "telecommunications" providers. The chief focus of the Comments, however, is the effects of recent Commission actions on rural telephone

telephone services, most in rural areas, and are either contemplating an expansion into new types of services, or have recently diversified their service offerings. Many of RTG's members have experienced obstacles to market entry or frustration in attempts to excel in service provision due to a lack of understanding and appreciation on the part of the Commission of the constraints small and rural telecom companies labor under while competing in a generally highly-capitalized marketplace. The Commission has spent the previous two years paying significant lip-service to the concept of opening the telecommunications industry to a diversity of voices, notably small businesses and rural telephone companies. Sadly, the Commission's recent regulatory and policy-making actions speak of a much different focus — one which emphasizes the generation of money for the federal treasury at the expense of those entities that require the Commission's assistance to succeed and which Congress has directed the FCC to assist. RTG is submitting these comments to remind the Commission that actions speak louder than words, and to urge it to heed the displeased outcry that is likely to be raised by the NOI.

Many of the commenters in this proceeding will be responding to the Commission's specific request for financial, geographic, and workforce data, ostensibly invited for the purpose of profiling the typical composition of a small telecom business. RTG sees this request as a transparent effort on the part of the Commission to appear interested and involved. RTG says, "enough data-gathering." How many times can numbers be crunched and statistics analyzed before the Commission gets to the crux of the problem? RTG maintains that both the Commission and industry are well-aware of the profile of small

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companies who are also small businesses.

telecom businesses. Because the members of RTG are typical, from a statistical standpoint, of other small entities that will be adding stacks of spreadsheets to the Commission's piles, these comments will focus on the policies and practices that fall short of the Commission's purported goals to assist small telecom businesses with market entry, industry expansion and survival.

## **I. COMMENTS**

### **A. THE COMMISSION HAS LOST SIGHT OF ITS DUTY TO SMALL AND RURAL TELECOM PROVIDERS**

There was a time when the Commission appeared to be on the right track in terms of regulatory treatment of small and rural telecom providers. In 1990, the *LEC Price Cap Order* stated that the Commission would "initiate further proceedings dealing specifically with regulatory issues of concern to small and mid-size LECS."<sup>2</sup> The *LEC Price Cap Order* committed to examining regulatory options that "recognize the unique circumstances" facing smaller LECs.<sup>3</sup> Additionally, the *LEC Price Cap Order* resolved to continue to examine small company issues, "to ensure that desirable regulatory reforms are applied to small telephone companies as far as possible and applied with sensitivity to their special

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<sup>2</sup> *In re Matter of Policy and Rules Concerning Rates for Dominant Carriers; Part 2 of 2, Second Report and Order*, 5 FCC Rcd 6786, 6827 (1990) ("*LEC Price Cap Order*").

<sup>3</sup> *Id.*

circumstances."<sup>4</sup>

In May, 1993, the Commission took significant steps to improve the way it regulates small and mid-size LECs. In the *Report and Order* mandating regulatory reform for LECs subject to rate of return regulation, the Commission noted that

smaller carriers face increased challenges on a number of fronts. Neighboring Bell Operating Companies compete for customers with new services and repackaged existing services. Changing regulatory requirements, such as the Commission implementation of Open Network Architecture and requirements for expanded interconnection, create new expectations from customers and increase the demand for quality of service and responsiveness. Finally, new technologies, in particular those offered by neighboring exchanges, increase the LECs' need for regulatory flexibility and the ability to respond to competitive service offerings.<sup>5</sup>

On May 20, 1994, FCC Chairman Reed E. Hundt sat before the United States House of Representatives Committee on Small Business and said,

As part of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), Congress gave the FCC authority to license the spectrum that the Commission has allocated for emerging technologies through a system of competitive bidding. In so doing, Congress told us to balance a number of competing objectives, including the need to develop and rapidly deploy new technologies, recover for the public a portion of the value of the spectrum, promote the efficient and intensive use of the spectrum, and disseminate licenses among a wide variety of applicants, in particular, small businesses, rural telephone

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<sup>4</sup> *Id.*

<sup>5</sup> *In re Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order*, 8 FCC Rcd 4545, 4545 (1993).

companies, and businesses owned by women and minorities.<sup>6</sup>

It appears that once this statement was uttered, the intentions behind it regarding the Commission's obligation to balance competing objectives were quickly forgotten. This is particularly true in the case of rural telephone companies, which have experienced decreasing support from the Commission in situations related to the provision of new services.

RTG acknowledges and accepts the Commission's duty to alter its regulatory schemes with respect to women- and minority-owned businesses in the wake of the *Adarand Constructors, Inc. v. Pena*.<sup>7</sup> Yet, while these formerly distinct designated entity categories have been accommodated in other manners as compensation for their loss of category-related preferences, rural telephone companies founder in preference-limbo, continuously included in the "designated entity" definition, but rarely treated as such. Rural telephone companies are routinely excluded from entitlement to bidding credits, installment payment plans and reduced down payments and upfront payments, unless they meet a particular auction's "small business" definition — often impossible for some of RTG's members.<sup>8</sup> In limited situations, rural

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<sup>6</sup> Statement of FCC Chairman Reed E. Hundt, Before the United States House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance and Urban Development, May 20, 1994.

<sup>7</sup> 115 S.Ct. 2097 (1995).

<sup>8</sup> See, e.g., *In re* Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, and Implementation of Section 309(j) of the Communications Act — Competitive Bidding, *Report and Order*, MM Docket No. 94-131 and PP Docket No. 93-253 (released June 30, 1995) ("*MDS R&O*") at ¶ 176, ("Although we will offer installment financing, reduced upfront payments and bidding credits to small businesses, we have concluded that the provision of additional measures for rural telephone companies is unnecessary in the MDS auction."); *In re* Implementation of Section 309(j) of the



telephone companies may qualify to bid in an entrepreneurs' block, but not every service auction has one. The only preference rural telephone companies could count on was the exclusive right to partition a license, but the Commission has just proposed to eliminate this exclusivity to permit competition for partitioned licenses.<sup>9</sup>

The Commission may have the misperception that small and rural telecom providers are well-capitalized, dominant companies, especially when they serve portions of the country where there are no competing services. In those areas where rural and remote populations have no alternative providers to depend on for their telecommunications needs, rural telephone companies have a greater service obligation to their customers than do other types of telecommunications providers. While larger companies, and those that serve predominantly urban areas have the ability to choose the types of services they will carry based on the profits those services will return, rural telephone companies are under a customer-imposed obligation to provide all the services their customers demand, regardless of the return on their investment. Not only is this obligation in keeping with universal service principals, it is part of rural telephone companies' mission to serve their customers in the fullest, most efficient manner possible.

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Communications Act — Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5532, 5539 (1994) ("*Fifth R&O*") ("We do not think that any other measures [aside from partitioning] are necessary in order to satisfy the statute's directive that we ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services, and to satisfy our goals to ensure that PCS is provided to all areas of the country, including rural areas.")

<sup>9</sup> See *In re Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees -- Implementation of Section 257 of the Communications Act — Elimination of Market Entry Barriers*, *Notice of Proposed Rulemaking*, WT Docket No. 96-148, GN Docket No. 96-113, (released July 15, 1996).

The Commission recognizes that rural telephone companies' existing infrastructure makes them well suited to introduce new services into their service areas and surrounding areas.<sup>10</sup> This being the case, it is difficult to understand why the Commission should make it so difficult for rural telephone companies to acquire the licenses and build-out the plant they need to ensure the rapid delivery of new services to their customers. It is part of the Commission's charge under Section 309(j)(3)(A) of the Communications Act of 1934, as amended ("Communications Act"), to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative and judicial delays."<sup>11</sup> In order to meet this charge, the Commission needs to foster, not stifle, the growth of small and rural telecommunications providers. The regulatory actions discussed herein indicate that the Commission either does not realize it has been stifling such growth, or chooses to ignore the Congressional mandate that the FCC facilitate such growth.

#### **B. THE EVER CHANGING SMALL BUSINESS DEFINITION -- RURAL TELCOS IN WONDERLAND**

When they awake in the morning, small telecom providers, like Lewis Carroll's Alice, must ask themselves, "Am I still 'small' today?" To find the answer, they must consult the most recent auction order to determine the small business criteria "du jour." In the

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<sup>10</sup> *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Second Report and Order*, 9 FCC Rcd 5532, 5596 (1994) ("*Competitive Bidding Second R&O*").

<sup>11</sup> 47 U.S.C. § 309(j)(3)(A).

*Competitive Bidding Second R&O*, the Commission retained the right to vary particular auction rules and procedures from service to service.<sup>12</sup> The Commission adopted, on its own motion, the flexibility to choose, "from within a defined range, the appropriate procedures for particular services, depending on the characteristics of the service such as the likely value and interdependence of the licenses being auctioned and the capital required to construct a system."<sup>13</sup> While this "defined range" has never been crystallized, the *Competitive Bidding Second R&O* set the framework for all the auctions held thus far. For the most part, rural telephone companies have been consistently pushed out of the "range" with regard to the small business definition and the designated entity preferences accorded thereunder. By the same token, preferences designed exclusively for rural telephone companies (*i.e.*, geographic partitioning), regardless of size, have rarely been implemented, or are currently threatened with extinction.

The definition of "small business" adopted in the *Competitive Bidding Second R&O* is a business that, together with all its affiliates, has no more than a \$6 million net worth, and after federal income taxes, does not have in excess of \$2 million in annual profits for the two previous years. The Commission applied this definition in the Interactive Video and Data Service (IVDS) auction.<sup>14</sup> By the *Fifth Report and Order*, the permissible size of a small business had been expanded to annual gross revenues of no more than \$40 million for the

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<sup>12</sup> *Competitive Bidding Second R&O*, 9 FCC Rcd at 7246.

<sup>13</sup> *Id.*

<sup>14</sup> *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fourth Report and Order*, 9 FCC Rcd 2330, 2336 (1994).

three preceding years. This definition has been applied to auctions for both narrowband and broadband PCS, and Multipoint Distribution Service ("MDS"), and is proposed for 37 GHz spectrum.<sup>15</sup> For the 900 MHz Specialized Mobile Radio ("SMR") services and 800 MHz SMR services auctions, there are two "types" of small businesses: "small," which are businesses that gross \$15 million or less for the three preceding years, and "very small," which are businesses that gross \$3 million or less for the three preceding years.<sup>16</sup> And, for the Broadband PCS D, E, & F Block Auction, the FCC definition of "very small business" is a business with gross revenues of \$15 million or less for the preceeding three years, and "small business" is a business with gross revenues of \$40 million or less for the preceeding three years.<sup>17</sup> Then there is the definition of an "entrepreneur," which is a business with annual gross revenues of \$125 million or less for the two previous years, and no more than

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<sup>15</sup> *Fifth R&O*, 9 FCC Rcd at 5581-84; *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 (1995); *MDS Report and Order*, 10 FCC Rcd 9589, 9671-72 (1995); *In re Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order*, 10 FCC Rcd 9589, 9671-72 (1995); *In re Amendment of the Commission's Rules Regarding the 37.0-38.6 GHZ and 38.6-40.0 GHZ Bands, Notice of Proposed Rulemaking and Order*, ET Docket No. 95-183 (released December 15, 1995) at ¶ 88.

<sup>16</sup> *In re Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2075-77 (1996); *In re Implementation of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1574 (1996) ("800 MHz SMR Order").

<sup>17</sup> See 47 C.F.R. 24.720(b).

\$500 million in total assets. This is a generous definition, but not all spectrum auctions include an "entrepreneurs' block" set aside solely for entities meeting this criteria.

The problem with these fluctuations in the small business definition is that a rural telephone company which has qualified for all the preferences afforded a small business in one auction may find that these options are foreclosed to it in a different auction due to a change in the small business criteria. Rural telephone companies that are the sole source of telecommunications services for their service areas often find that they are unable to afford to bring a particular service to their customers because they cannot compete in an auction without the benefit of bidding credits, installment payment plans, or reduced down and upfront payments.

For those rural telephone companies that cannot meet the small business criteria "du jour," the preference options are practically non-existent. In most auctions held to date, rural telephone companies have had the exclusive right to partition an already dispensed license, but this right is now on the chopping block. Some rural telephone companies waste precious time trying to devise a lawful restructuring scheme that will allow them to participate in an auction with the preferences they require to compete with other bidders. More often than not, restructuring cannot be accomplished and the rural telephone companies must rely on the ability to partition a license in order to bring new services to their customers.

While a variable small business definition may not pose problems for other entities, especially those that can devise their initial corporate composition to meet the requirements, rural telephone companies tend to be well-established, and are not able to restructure themselves to meet the small business definition. Small and rural telephone companies

require either a small business definition that logically relates to their realistic financial foundation, or a set of preferences and set-asides all for themselves, so that they have a genuine opportunity to compete for spectrum in every type of service that can be offered. Small and rural telephone companies need to know that every day, without changing a thing about their organization, they can participate in the acquisition of spectrum which can be used to provide new services for their customers. The ever changing criteria for small business preferences minimize the incentive for a rural telephone company to restructure in order to qualify for one auction, when there is no guarantee that such criteria will apply in another auction.

While the Commission may well be within its own authority to manipulate auction rules based on its "experience with different auction techniques," and its own estimation of the value of a particular set of licenses, reliance on these factors to set the standards by which designated entity preferences will be awarded is speculative, and suspiciously indicative of an attempt to structure an auction so as to generate the most revenue. When Congress authorized the Commission to use competitive bidding to award licenses, it requested that the Commission also "[recover] for the public . . . a portion of the value of the public spectrum."<sup>18</sup> It was not Congress' intention that the Commission turn spectrum auctions into vehicles for revenue generation, but rather, to ensure that licenses were procured by those that valued them most. Value does not always mean economic value. There are social values that must be considered. The FCC has lost sight of this and must reevaluate its procedures.

In order to formulate sound business plans and implement the provision of new

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<sup>18</sup> 47 U.S.C. § 309(j)(3)(C).

services in a rapid and cost-effective manner, small and rural telecom providers need a consistent and reliable auction scheme that they can expect the Commission to utilize each and every time a new service offering is made available. The Commission must stop treating small and rural telecommunications providers as if they can fend for themselves amidst a sea of better-capitalized competitors, and start concentrating on its duty to ensure that these entities receive every opportunity to participate and acquire the licenses required to provide new and innovative telecommunications services to their rural customers. By allowing rural telephone companies to receive benefits of a small business, the Commission will comply with Section 309(j) of the Communications Act.

**C. THE FCC'S RECENT IVDS AUCTION ORDER ERECTS ANOTHER ROADBLOCK TO RURAL TELECOM PROVIDERS**

It is veritably a foregone conclusion that the opportunity for rural telecom providers to offer interactive video and data services ("IVDS") has been limited by the Commission's IVDS auction rules. Attempts by rural telecom concerns to urge the Commission to extend to rural telecom providers some incentives to procure IVDS licenses have met with the same rejection as similar requests in other services.<sup>19</sup> Both RCA and USIN argued that rural telecom providers require bidding credits and other special provisions typically afforded to entities meeting the "small business" definition in order to bring IVDS to rural areas. As both parties aptly noted, "it will take more than build-out capability for rural telephone companies to provide IVDS offerings . . . financial ability is required to obtain the license at

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<sup>19</sup> Petitions for Reconsideration of Implementation of Section 309(j) of the Communications Act — Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994) were filed by the Rural Cellular Association ("RCA") and U.S. Intelco Networks, Inc. ("USIN").

auction in the first place.”<sup>20</sup>

The Commission’s reason for denying these requests is again speculative. Citing to its authorized discretion to tailor the use of special provisions as necessary for each particular service, the Commission stated that it expects “that the cost of winning licenses, and subsequently building-out systems, will be relatively modest compared to the costs associated with other services subject to auctions.”<sup>21</sup> This statement implies that there are other services, which are more expensive to implement, for which the Commission has exercised or will exercise its discretion to assist rural telecom providers in license acquisition and service provision. Yet, as these comments demonstrate, the Commission has never administered a service that appeared, in its discretion, to warrant any sort of assistance provisions for rural telecom providers. How expensive an undertaking must a service be before the Commission determines that rural telecom providers need some special preferences in order to participate in its offering? The mobile satellite service (“MSS”) might be one — with its naturally exorbitant investment requirements related to launching satellites — but the Commission side-stepped having to manage this issue by proposing to simply give one MSS license to an already-existing MSS licensee.<sup>22</sup>

The Commission has decided that rural telecom providers will be entitled to

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20 *In re* Implementation of Section 309(j) of the Communications Act — Competitive Bidding, *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, PP Docket No. 93-253 (released September 10, 1996) at ¶ 45 (*Sixth MO&O and FNPRM*).

21 *Sixth MO&O and FNPRM* at ¶ 46.

22 *See In re* Establishing Rules and Policies for the Use of spectrum for Mobile Satellite Services in the Upper and Lower L-Band, *Notice of Proposed Rulemaking*, IB Docket No. 96-132 (released June 18, 1996).



designated entity preferences, such as bidding credits and installment payments, if they meet the IVDS small business criteria.<sup>23</sup> At this time, the Commission is again proposing the two-tiered small business definition that it utilized in the 900 MHz SMR auction, discussed under the “Small Business Definition” section of these comments.<sup>24</sup> The Commission requests comment on how it should apply bidding credits to the licenses won by small business entities, specifically whether all small businesses should receive a 25 percent bidding credit, or whether “very small businesses” should receive a 15 percent credit while “small businesses” receive a 10 percent bidding credit.<sup>25</sup> As the Commission repeatedly revisits this issue, a question is raised as to the Commission's general approach to awarding preferences. If the Commission's duty to Congress under Section 309(j) of the Communications Act is to ensure the widest dissemination of licenses to the widest variety of licensees; create economic opportunities for rural telecom providers, among others; encourage the rapid delivery of new and innovative technologies to rural America; while recovering for the public a portion of the value of the spectrum required to accomplish these tasks, why is the Commission spending so much time creating barriers to obtain such licenses. Would it not make more sense to consistently provide, to all those who have shown they require them, the most favorable terms on which to compete for licenses? Why does the Commission, in its discretion, analyze who can afford to participate in a particular auction and at what cost, so that it can determine which entities can afford to take part at “full price” and which entities require a discount?

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23 *Sixth MO&O and FNPRM* at ¶ 47.

24 *Id.* at ¶ 69.

25 *Id.* at ¶¶ 72-3.

This policy can only be interpreted as revenue-oriented, in that it guarantees, through exhaustive manipulation, that each and every potential licensee pays the most money it can possibly afford for the privilege of obtaining a license. It is not the Commission's duty to exact for the public the highest possible price for spectrum; it is the FCC's charge only to create the means by which as many interested parties as possible are able to participate in the dissemination of spectrum. It is the participants themselves, through their bids, who determine the value of spectrum as it relates to a particular telecommunications service. Participants are the public, and by prescribing limits on how the public may participate in auctions, the Commission is imposing its own value on spectrum worth, in contravention of its congressional charge.

**D. THE PROCEDURAL COST OF AUCTION PARTICIPATION FURTHER DISADVANTAGES SMALL RURAL TELECOM PROVIDERS**

There is significant cost associated with participation in an auction, aside from the monies that must be collected to pay a winning bid. The cost of on-line bidding through a "900" telephone number and the cost of the remote bidding software are comparatively high for small businesses. These charges were not imposed on big businesses in the FCC's Broadband PCS A and B Block auction. RTG applauds the Commission for its reduction in the cost of online access to auction proceedings — from \$4.00/minute to \$2.30/minute. RTG would like to point out, however, that this lower per minute charge for remote electronic bidding still requires quite a large monetary investment for smaller entities.

As the Commission moves toward an auction based solely on electronic remote

bidding, the choice of saving money by having a representative place bids in person is eliminated. The cost of purchasing the bidding software, and monitoring the auction process and placing electronic bids on a daily basis for up to several months becomes a very expensive undertaking. RTG has members who have spent more than \$2,000 per month, for periods of up to three months, for remote bidding on-line charges alone.

These costs, which are incidental expenses for large establishments, are burdensome and problematic for small rural telecom providers. There should be a way to further reduce the costs of electronic remote bidding, if not eliminate the cost entirely. At this advanced stage in the Commission's experience with the auction process, there should be little or no cost associated with software design. It also should be possible to offer a price break on per minute access to small businesses and rural telephone companies, especially those participating in a designated entity-block auction. The Commission could offer reduced-cost per-minute access to these entities, or develop a reduced-cost usage plan, similar to those offered by traditional long distance telephone companies. Such a plan could extend discounts in per-minute access based on the amount of time an auction participant spends online. The more online time a bidder accrues, the cheaper the access should be. By far the most economical and logical plan would be for the Commission to offer free software and remote access time to all participants, or to designated entities, and reimburse itself for these expenses directly off the top of the auction monies collected in the particular auction. The cost of providing these services is negligible in comparison to the amounts raised by the auctioning of spectrum. To deduct the cost of providing electronic bidding from the money paid for spectrum would have no impact whatsoever on the Commission's ability to receive

from the public the true value of the spectrum allocated. Such a plan would go far in assisting small and rural telecommunications providers in their quest for new services, while having a *de minimis* impact on the Commission's auction goals.

**E. DECREASING THE INTEREST-ONLY PAYMENT PERIOD FOR F-BLOCK LICENSES SERIOUSLY IMPAIRS THE ABILITY OF RURAL TELECOM PROVIDERS TO ACQUIRE AND RAPIDLY BUILDOUT RURAL PCS SYSTEMS**

In decreasing the interest-only payment period for PCS F block licenses, the Commission has dashed yet another plan that would assist small, rural telecom providers in bringing broadband PCS service to their customers. The *Adarand* decision requires the FCC to eliminate two of the five original F block installment payment plans that pertained exclusively to women- and minority-owned businesses. For one brief, shining moment, the Commission was poised to extend the most favorable of these two plans to all small businesses — the ability to make interest-only payments for the first six years of a PCS license term, with principal and interest amortized over the remaining four years.<sup>26</sup> The Commission based this decision on the accurate deduction that deferring principal payments for six years would assist designated entities in avoiding an unwanted sale of their systems due to a lack of money.<sup>27</sup> Then, despite the apparent majority of comments favoring this

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<sup>26</sup> *In re* Amendment of Parts 20 and 24 of the Commission's Rules — Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, *Report and Order*, WT Docket No. 96-59, GN Docket No. 90-314, (released June 24, 1996), at ¶¶ 37-8 [*F Block Report and Order*].

<sup>27</sup> *In re* Implementation of Section 309(j) of the Communications Act — Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253 (released November

proposal, the Commission chose to adopt a two-year interest-only payment plan for small businesses.<sup>28</sup>

The Commission's justifications for this decision are weak. It questions the need for a six-year interest-only payment period "given that the amounts bid for the 10 MHz licenses will most likely be lower than those bid for 30 MHz licenses in the C block."<sup>29</sup> The Commission should be chastised for basing anything as critical as financing schemes for auction participants on something as speculative as the amounts of bids yet to be made. No one knows the worth of 10 MHz broadband PCS licenses until the auction is complete and the public has placed a value on them through bidding. To guess that they will be worth less than some other licenses, and thereby determine that designated entities will require less financial assistance to acquire them, is dangerous and irresponsible. It is far wiser to plan for the worst case and be happily surprised than it is to strap designated entities into financially precarious situations, and deal with the outcome.

The Commission additionally surmises that "[t]he build-out requirements for 10 MHz licenses are more liberal than those for 30 MHz licenses, requiring only a one-fourth

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23, 1994) at ¶ 104.

<sup>28</sup> *F Block Report and Order*, at ¶42. In the Commission's discussion of the comments received on this proposal, thirteen parties are listed as generally supporting adoption of the most favorable installment payment plan; two commenters, DCR and Airlink, specifically requested that the six-year interest-only payment be retained. Only PersonalConnect and AT&T argued that this interest-only period should be shortened or eliminated. PersonalConnect suggested that the interest-only payment period be reduced to four years, to "dampen speculation," and AT&T brazenly suggested that small business provisions for the F block be eliminated altogether. Naturally, one would not expect AT&T to care in the least about small business preferences.

<sup>29</sup> *Id.* at ¶ 38.

population coverage or showing of substantial service within the first five years, as compared to the one-third population coverage required of 30 MHz licenses."<sup>30</sup> When one-fourth of a rural telecom provider's population happens to inhabit rugged, climatically-difficult terrain, a six-year interest-only payment period means more time and more money to get the service to them. These build-out requirements may be "less burdensome" for designated entities that serve densely-populated, easily accessible geographic areas, but they do not necessarily spell relief for the rural telecom provider.

Rural telecom providers are not speculators or insincere bidders. They cannot afford to be. These entities have limited budgets with which they are expected to implement as many new and innovative services as their customers desire. Rural telecom providers need the six-year interest-only payment period so that they can responsibly deliver broadband PCS in a rapid and efficient manner, while maintaining the quality of their existing services. Rural telecom providers made plans to participate in the F block auction based on an understanding that this interest-payment scheme would apply. Reducing the interest-only payment plan to two years will only delay bringing broadband PCS service to rural customers, if it does not foreclose the participation of some rural entities entirely. If the Commission insists on perpetuating the term "most favorable" in association with its proposed small business installment payment plan, then it needs to retain the aspects of the plan that made it the most favorable initially — the ability to make interest-only payments for the first six years of the license term.

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<sup>30</sup> *Id.* at ¶ 45.

**F. PROPOSING TO ELIMINATE RURAL TELCOS' EXCLUSIVE RIGHT TO PARTITION LICENSES FURTHER TILTS THE REGULATORY PLAYING FIELD AGAINST RURAL TELCOS**

As the foregoing discussion illustrates, small and rural telephone companies have been injured by the Commission's recent actions. To round out its record of consistently failing to meet its obligations under Section 309(j) of the Communications Act, the Commission now proposes to eliminate the one designated entity preference rural telephone companies have come to rely on for the ability to participate in the acquisition of new services — the exclusive right to partition licenses. Not only is this proposal targeted to injure the one group of entities known for their dedication to the principles of the Communications Act, but it effectively terminates the Commission's ability to carry out its own obligations to rural telephone companies and their customers, as mandated by the Act.

Section 309(j)(3)(A) of the Communications Act states that the Commission is charged with promoting "the development and rapid deployment of new technologies, products, and services for the benefit of the public, **including those residing in rural areas**, without administrative or judicial delays."<sup>31</sup> To implement this directive, the Commission adopted its original partitioning arrangement, which gave rural telephone companies the exclusive right to license geographic segments of other FCC licensees' service territories. The Commission established the partitioning scheme based on the recognition that existing infrastructure makes rural telephone companies well-suited to introduce new services rapidly into their service areas, which are less profitable to serve for companies without existing infrastructure than

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<sup>31</sup> 47 U.S.C. § 309(j)(3)(A) (emphasis added).

more densely populated urban areas.<sup>32</sup>

The Commission's proposal to eliminate this exclusive arrangement opens the door for less-qualified entities to undertake the responsibility of ensuring that rural areas of the country receive quality, innovative services in a timely manner. The fact that entities other than rural telephone companies must invest considerable time and money to build the infrastructure that rural telephone companies already employ means that rural customers must endure delay in receiving service. As the Commission relaxes its build-out requirements for various services, it is possible that some rural customers, especially those in very remote or rugged areas, might never receive new services at all. A partitioned licensee that can avoid bringing service to difficult geographic areas by satisfying its build-out requirements in other ways will surely do so. Rural telephone companies do not have this option. What rural telephone companies have is a strong loyalty and obligation to the rural communities they serve, and the Commission is wasting an opportunity to shine in its obligations under Section 309(j)(3)(A) by foreclosing rural telephone companies from doing what they do best — speeding the delivery of new and innovative service to rural America.

Section 309(j)(3)(B) of the Communications Act requires the Commission to promote economic opportunities for a variety of telecommunications providers, including rural telephone companies.<sup>33</sup> As the balance of these comments demonstrates, rural telephone companies receive the least amount of assistance from the Commission with regard to the acquisition of licenses. Rural telephone companies are repeatedly excluded from the right to

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<sup>32</sup> *Fifth R&O*, 9 FCC Rcd at 5597.

<sup>33</sup> 47 U.S.C. § 309(j)(3)(B).



utilize bidding credits, installment payment plans, and reduced down payments and upfront payments — all benefits enjoyed by the other types of designated entities. Eliminating the exclusive right of rural telephone companies to negotiate for partitioned licenses revokes the one designated entity preference on which rural telephone companies have come to rely. Designated entities other than rural telephone companies not only have an edge over rural telephone companies in their ability to employ this long list of preferences, they tend to have more capital. Most small businesses are bank-rolled by well-financed non-controlling interests. Rural telephone companies, by their nature, must pour most of their revenues back into their infrastructure to adequately serve customers in difficult locations. In every case, it is impossible for rural telephone companies to bid for licenses head-to-head with designated entities that have a whole bag of preferences to assist them. The Commission's partitioning proposal wipes out rural telephone companies' only economic opportunity to participate in the acquisition of new services for the telecommunications consumers of rural America. It also brings into question the Commission's own standing as the gatekeeper of the rubric promulgated by the Communications Act of 1934, as amended.

**G. THE COMMISSION NEEDS TO RETAIN EXTENDED  
IMPLEMENTATION AUTHORITY FOR SMALL AND RURAL  
TELECOM PROVIDERS**

Spectrum auctions are not the only context in which the Commission has failed to properly account for the interests of small and rural telecom providers. The FCC's policy on extended implementation ignores its impact on such providers. The Commission initially established extended implementation authority ("slow growth") for SMRs to facilitate the